

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 15, 2004

IN RE:

**PETITION FOR ARBITRATION OF CELLCO PARTNERSHIP
D/B/A VERIZON WIRELESS**

**PETITION FOR ARBITRATION OF BELL SOUTH MOBILITY
LLC; BELL SOUTH PERSONAL COMMUNICATIONS, LLC;
CHATTANOOGA MSA LIMITED PARTNERSHIP;
COLLECTIVELY D/B/A CINGULAR WIRELESS**

**PETITION FOR ARBITRATION OF AT&T WIRELESS PCS, LLC
D/B/A AT&T WIRELESS**

PETITION FOR ARBITRATION OF T-MOBILE USA, INC.

**PETITION FOR ARBITRATION OF SPRINT SPECTRUM L.P.
D/B/A SPRINT PCS**

**DOCKET NO.
03-00585**

ORDER REGARDING DISCOVERY

This matter is before the Pre-Arbitration Officer to address several outstanding issues regarding discovery.

Motion Regarding CMRS Providers' First Set of Interrogatories ("Motion")

The Commercial Mobile Radio Services ("CMRS") providers filed this *Motion* with the Tennessee Regulatory Authority ("TRA") on March 19, 2004 seeking leave to exceed the number of interrogatories permitted by Tenn. Comp. R. & Regs. 1220-1-1-.11(5)(a). In support of this request, the CMRS providers assert that additional interrogatories are both reasonable and appropriate and should be permitted since, in this consolidated arbitration, the interests of five different CMRS providers are being addressed.

The Rural Coalition of Small LECs and Cooperatives ("Coalition") filed its *Response in Opposition to Motion Regarding CMRS Providers' First Set Of Interrogatories* on March 26, 2004,

contending that the CMRS providers have exceeded the limitation on the number of interrogatories permitted by at least eighteen questions and have not provided sufficient justification for doing so. The Coalition also contends that their interests would be prejudiced by the additional requests since the procedural schedule only allowed a total of ten days to respond.

Pursuant to Tenn Comp. R. & Regs. 1220-1-1-.11(5)(a),

No party shall serve on any other party more than forty (40) discovery requests including subparts without first having obtained leave of the Authority or a Hearing Officer. Any motion seeking permission to serve more than forty (40) discovery requests shall set forth the additional requests. The motion shall be accompanied by a memorandum establishing good cause for the service of additional interrogatories or requests for production. If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests.

The CMRS providers have included in their *First Set of Interrogatories* thirty-eight separately-numbered questions. Upon submission of these interrogatories, the CMRS providers also submitted the *Motion* for the TRA's consideration. The CMRS providers did mention that the limitation on discovery requests may have been exceeded but did not specify the number of additional questions included and did not submit a separate memorandum in support of the *Motion*. However, the *First Set of Interrogatories* did include all questions being asked of the Coalition members and did provide a justification, albeit brief, for the additional questions.

Although the CMRS providers may not have complied with the letter of TRA Rule 1220-1-1-.11(5)(a), they have sufficiently complied with its spirit. The CMRS providers' *First Set of Interrogatories* was submitted on March 19, 2004 along with the *Motion*. Because the Procedural Scheduled was stayed on March 26, 2004, the Coalition members were not required to answer the additional requests without prior authorization from the TRA. Further, the CMRS providers did provide good cause for the additional requests even though not in a separately filed memorandum. Finally, the Pre-Arbitration Officer has counted forty-six interrogatories from the CMRS providers, including sub-parts, while the Coalition has counted fifty-eight. In either case, because this

consolidated Docket consists of five separately filed petitions for arbitration, the Pre-Arbitration Officer does not find these additional questions to be unreasonable. In as much as the Procedural Schedule has now been stayed for nearly three weeks, the ability of the Coalition members to answer all the interrogatories should not be prejudiced. For these reasons, the *Motion* is hereby granted.

Discovery to BellSouth, Telecommunications, Inc. ("BellSouth")

On March 22, 2004, the Coalition filed with the TRA its *Interrogatories and Requests for the Production of Documents and Things Submitted to BellSouth Telecommunications*. On March 25, 2004, BellSouth filed a letter with the TRA objecting to these interrogatories on the premise that it is not a party to this arbitration and stating that it would not respond to the interrogatories unless and until it is required to become a party. On April 12, 2004, an order was issued denying the request of the Coalition to join BellSouth as a necessary and indispensable party. For this reason, BellSouth need not respond to discovery submitted to it in this Docket as a party. Accordingly, any information sought from BellSouth shall be submitted in the form of a subpoena in compliance with the requirements of Tenn. Comp. R. & Regs. 1220-1-2-.13.

IT IS THEREFORE ORDERED THAT:

1. The *Motion* of the CMRS providers to exceed the interrogatory limitation of Tenn Comp. R. & Regs. 1220-1-2-.11(5)(a) is hereby granted.
2. BellSouth need not respond to any request for information in the context of this arbitration not submitted in the form of subpoena in accordance with the requirements of Tenn. Comp. R. & Regs. 1220-1-2-.13.



Kim Beals, Counsel
as Pre-Arbitration Officer